

# Order

Entered: April 1, 2003

Michigan Supreme Court  
Lansing, Michigan

Maura D. Corrigan,  
Chief Justice

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Clifford W. Taylor  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

Administrative Order No. 2003-03

Appointment of Counsel for  
Indigent Criminal Defendants

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In cases in which the defendant may lack the financial means to retain counsel and the Supreme Court is granting leave to appeal, an inquiry into the defendant's financial status may be necessary. Where the Court orders such an inquiry, it shall proceed in the manner outlined in this administrative order, effective immediately.

The defendant must file, on a form developed by the State Court Administrative Office, an affidavit concerning present financial status. The affidavit must be filed in the circuit court from which the case is being appealed. The circuit court must provide the prosecuting attorney with a copy of the defendant's affidavit within 7 days. The prosecuting attorney may challenge the defendant's asserted lack of financial means to retain counsel by filing an appropriate motion with the circuit court within 14 days after the prosecuting attorney receives the copy of the affidavit. The circuit court may question the asserted lack of financial means on its own motion. If such a motion is filed by the prosecuting attorney or if the issue is raised by the circuit court *sua sponte*, the circuit court must conduct a hearing on the matter within 21 days after the motion is filed or the issue is raised. The prosecuting attorney, the defendant, and an attorney appointed by the circuit court to represent the defendant must appear at the hearing.

If such a motion is filed or if the issue is raised by the circuit court, the circuit court must determine whether the defendant lacks the financial means to retain counsel on the basis of (1) the defendant's present assets, employment, earning capacity, and living expenses; (2) the defendant's outstanding debts and liabilities, both secured and unsecured; (3) whether the defendant has qualified for, and is receiving, any form of public assistance; (4) the availability and convertibility, without undue financial hardship to the defendant or the defendant's family, of real or personal property owned by the defendant; (5) whether the defendant is incarcerated; and (6) any other circumstances that would affect the defendant's ability to pay the fee that ordinarily would be required to retain competent counsel. If the defendant's lack of financial means appears to be temporary, the circuit court may order that the defendant repay, on appropriate terms, the expense of appointed counsel.

If, after such a challenge or question, the circuit court determines that the defendant lacks the financial means to retain counsel, the circuit court must appoint counsel or continue the appointment of previously appointed counsel within 14 days after the hearing. If there has not been such a challenge or question, the circuit court must appoint counsel or continue the appointment of previously appointed counsel within 28 days after the defendant files an affidavit concerning present financial status. The circuit court must promptly forward to the Clerk of the Supreme Court a copy of the appointment order and must promptly provide counsel with any portion of the record that counsel requires.

If the defendant does not file an affidavit concerning present financial status or if the circuit court determines that the defendant does not lack the financial means to retain counsel, the circuit court must promptly notify the Clerk of this Court.

Administrative Order No. 1972-4, 387 Mich xxx (1972) is rescinded.

Staff Comment: Administrative Order No. 2003-03 replaces Administrative Order No. 1972-4, 387 Mich xxx (1972), and simplifies the form of order used when the Supreme Court directs the appointment of counsel. Administrative Order No. 2003-03 is not intended as a substantive or procedural change in the process for appointment of appellate counsel in the Supreme Court.